

Walgreens Argues Proxy Access Shareholder Proposal Should be Excluded

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A proxy access shareholder proposal from CtW Investment Group should be excluded for lack of clarity and because it conflicts with the company's bylaws, Walgreens contended in a no-action [letter](#) request to the SEC staff.

The proposal seeks to allow shareholders who have owned at least 3% of company stock for at least three years to submit nominations to Walgreens' board. The company states that the proponent failed to explain how the proposed bylaw amendment would be integrated with its existing bylaws. The letter challenges the reference in the proposal permitting conforming amendments to related bylaws as being insufficient given the uncertainty as to which bylaw provisions would be deemed "related" and therefore able to be changed. For example, Hewlett-Packard does not allow cumulative voting by the shareholder using proxy access in favor of its nominee, and Walgreens makes the case that CtW's proposal is impermissibly vague as to whether a similar prohibition is permissible as a related bylaw, since it also allows cumulative voting for directors.

In addition, the company argues that the proposed bylaw provision directly conflicts with existing bylaws because it limits the information required to be furnished to the company by the nominating shareholder and does not demand that the nominee deliver a questionnaire.

The letter also lists a number of interesting procedural safeguards that have been put in place by companies that have adopted proxy access bylaw provisions, including restrictions on nominees who have been involved in criminal proceedings, making those nominees ineligible for future elections if they receive less than a certain amount of votes, and even requiring standstill agreements from persons making the nominations that would prevent additional nominations or acquiring more than a specified additional amount of company securities.

During 2013, two proposals seeking proxy access passed at Verizon and CenturyLink, while nine failed, including a proposal at Nabors that received over 50% of votes cast. While the average level of support was 32%, the numbers blur the fact that proposals seeking nominations for holders of 1% of company shares fare substantially worse than those looking to give that right to shareholders who own a minimum of 3%.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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